

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

THE ESTATE OF THOMAS KIRBY and
BRENDA KIRBY,

Plaintiffs,

v.

Case No. 05-CV-71884-DT

DEPUTY DUVA, DEPUTY CARRIER,
SERGEANT BUCKLEY,

Defendants.

**ORDER STAYING CASE AND
TERMINATING AS MOOT DEFENDANTS' "EMERGENCY MOTION"**

On June 20, 2006, this court issued an order denying in part Defendants' motion for summary judgment, and finding that Defendants Duva, Carrier and Buckley were not entitled to qualified immunity on Plaintiff's claims brought under 42 U.S.C. § 1983. A district court's order denying a defendant's motion for summary judgment is immediately appealable where the defendant is a public official asserting a qualified immunity defense. *See Mitchell v. Forsyth*, 472 U.S. 511, 528. Accordingly, on July 5, 2006, Defendants filed a notice of appeal. As Defendants have exercised their right to an immediate *Forsyth* appeal, the court will stay all proceedings in this matter pending resolution of the appeal. *See Apostol v. Gallion*, 870 F.2d 1335, 1339 (7th Cir.1989) ("In the absence of the district court's reasoned finding of frivolousness or forfeiture, however, the trial is automatically put off; it should not be necessary for the defendants to come to this court, hat in hand, seeking relief that is theirs by virtue of *Forsyth*, which authorizes pre-trial appeals.") (emphasis omitted); *Blair v. City of Cleveland*, 148 F.

Supp. 2d 919, 922-923 (N.D. Ohio 2000) (“Acknowledging the importance of public officials’ right to avoid trial where they are entitled to immunity, the court does not wish to defeat the purpose of the rule by forcing the officers to defend themselves at trial, effectively extinguishing their right to qualified immunity.”). As the court explained to the parties during a July 10, 2006 telephone conference, the court finds no exceptional circumstances which would preclude a stay during the pendency of Defendants’ nonfrivolous appeal. Accordingly,

IT IS ORDERED that all proceedings in this matter are STAYED pending resolution of Defendants’ July 5, 2006 appeal.

IT IS FURTHER ORDERED that Defendants’ July 10, 2006 “Emergency Motion for Stay of Proceedings” [Dkt. 65] is TERMINATED as moot.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: July 11, 2006

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, July 11, 2006, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522